

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EMA FINANCIAL, LLC,	:	
	:	
Plaintiff,	:	
	:	17-cv-9706 (VSB)
-against-	:	
	:	<b><u>ORDER</u></b>
JOEY NEW YORK INC., et al.,	:	
	:	
Defendants.	:	
	:	
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VERNON S. BRODERICK, United States District Judge:

On September 6, 2023, I received the certified opinion of the Court of Appeals for the Second Circuit, vacating in part my judgment at Doc. 224. (Doc. 264.) The Court of Appeals has directed me “to determine whether the floating-price conversion options render the Notes [at issue in this case] usurious.” (*Id.* 20.) The Court of Appeals further instructs that if I “determine that the value of the floating-price conversion options, when measured at the time of contracting, causes the interest rates on the Notes to exceed 25%” then I must “find the Notes void and unenforceable pursuant to” *Adar Bays, LLC v. GeneSYS ID, Inc.*, 28 F.4th 379 (2d Cir. 2022). (Doc. 264 at 20–21.)

Accordingly, by September 14, 2023, the parties shall submit a joint letter proposing next steps for the adjudication of this matter, indicating if further briefing is necessary to facilitate the resolution of the direction given by the Court of Appeals, and if so, setting out a schedule for that briefing.

Additionally, motions for fees, (Doc. 228), and to compel compliance with a subpoena, (Doc. 252), are currently pending. The joint letter shall also address the implications of the

decision by the Court of Appeals for these motions and indicate, in light of that determination, whether these motions are mooted, should be modified, or should be maintained.

SO ORDERED.

Dated: September 7, 2023  
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, flowing style with a large initial "V".

Vernon S. Broderick  
United States District Judge